Customs Bulletin

Regulations, Rulings, Decisions, and Notices concerning Customs and related matters

and Decisions

of the United States Court of Appeals for the Federal Circuit and the United States Court of International Trade

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This issue contains:

THE DEPARTMENT OF THE TREASURY
U.S. Customs Service

NOTICE

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U.S. Customs Service

Treasury Decisions

19 CFR Part 12

(T.D. 83-235)

Imported Electronic Products: Entry and Release

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations relating to requirements for the entry and release of imported electronic products. The changes update and conform the regulations to current procedures and the statutory and regulatory requirements administered by Customs for the National Center for Devices and Radiological Health of the Food and Drug Administration. Specifically, the document provides that:

1. Electronic products offered for importation into the customs territory of the United States are subject to standards prescribed in the Public Health Service Act, as amended, and not the Radiation Control for Health and Safety Act of 1968. This corrects an erroneous statutory reference in the Customs Regulations.
2. An electronic product offered for importation into the customs territory of the United States may be excepted from conforming to the standards of the Public Health Safety Act, as amended, if the importer by declaration affirms that the product either was manufactured before the date the standards became effective, or is being imported for the purpose of research, investigations, studies, demonstrations or training.

EFFECTIVE DATE: This document is effective on December 19, 1983.

FOR FURTHER INFORMATION CONTACT: Legal Aspects: Darrell D. Kast, Entry Procedures and Penalties Division (202-566-5765); Operational Aspects: Harrison C. Feese, Duty Assessment Division (202-566-6651), U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229.

SUPPLEMENTAL INFORMATION:

BACKGROUND

Sections 12.90 and 12.91, Customs Regulations (19 CFR 12.90, 12.91), set forth the requirements for entry and release of electronic products offered for importation into the United States. The requirements are based on standards prescribed by the Food and Drug Administration (FDA) under section 358 of the Public Health Service Act (42 U.S.C. 201 *et seq.*), as amended by the Radiation Control for Health and Safety Act of 1968 (42 U.S.C. 263b *et seq.*).

Section 12.90 presently provides that "the Act" as referred to in section 12.91, means the Radiation Control for Health and Safety Act of 1968.

In addition, section 12.91 now requires that the importer or consignee of electronic products by declaration assert that the products either (1) conform to the standards of section 358 of the Public Health Service Act, as amended (42 U.S.C. 263(f)), or (2) will be brought into compliance with the standards unless intended solely for export.

In order to update the regulations and bring them into conformity with current Customs procedures as well as FDA requirements, a notice proposing to amend sections 12.90 and 12.91 was published in the Federal Register on May 5, 1983 (48 FR 20243).

The proposed amendment to section 12.90 provided that "the Act" as referred to in section 12.91 refers to the Public Health Service Act, as amended (42 U.S.C. 201 *et seq.*), and not the Radiation Control for Health and Safety Act of 1968 (42 U.S.C. 263b–263n). The notice also proposed to correct the statutory reference in section 12.90 to the Radiation Control for Health and Safety Act of 1968.

The proposed amendment to section 12.91 would modify the language of the two existing declarations in that section. It also proposed to add two alternative declarations whereby the importer of record may affirm that the products either (1) were manufactured before the date the standards became effective, or (2) are being imported for the purpose of research, investigations, studies, demonstrations, or training. Current citation of authority for section 12.91 was set forth as well in the proposal.

No comments were received in response to the notice of proposed rulemaking. However, based upon Customs review one minor change has been made to the document. The last sentence of section 12.91(e) has been revised to read:

> "If a special exemption is granted after the product has been imported under bond in accordance with paragraph (d) of this section, the bond conditions pertaining to the Secretary of Health and Human Services shall be deemed to have been satisfied."

This revision was necessary because the original language of paragraph (e), which was incorporated without change into the

Notice of Proposed Rulemaking, called for return of the bond upon the granting of a special exemption. Since the bond is posted to satisfy Customs requirements as well as those of the Department of Health and Human Services, and, in the case of a CF 7551, becomes a permanent part of the entry file, its return to the importer would be inappropriate.

After a review of the matter, other than for the change discussed above, Customs has determined to adopt the proposal as described in that notice.

E.O. 12291

It has been determined that the amendments in this document are not a "major rule" within the criteria provided in section 1(b) of E.O. 12291, and therefore no regulatory impact analysis is required.

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to an initial and final regulatory flexibility analysis (5 U.S.C. 603, 604) are not applicable to these amendments because the rule will not have a significant economic impact on a substantial number of small entities. The amendments are technical conforming amendments which clarify existing regulatory and statutory requirements without making any substantive change.

Accordingly, the document contains a certification pursuant to section 3 of the Regulatory Flexibility Act (5 U.S.C. 605(b)) that the amendments will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

The declaration requirements are subject to the Paperwork Reduction Act of 1980, Pub. L. 96–511. Accordingly, Form FD 2877 was submitted to the Office of Management and Budget for approval. Form FD 2877 was approved and its OMB approval number is 57–R0120.

Drafting Information

The principal author of this document was Glen E. Vereb, Regulations Control Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

List of Subjects in 19 CFR Part 12

Customs duties and inspection, Imports, Importers.

AMENDMENTS TO THE REGULATIONS

Part 12, Customs Regulations (19 CFR Part 12), is amended as set forth below.

WILLIAM VON RAAB,
Commissioner of Customs.

Approved: October 25, 1983.
JOHN M. WALKER, Jr.,
Assistant Secretary of the Treasury

[Published in the Federal Register, November 18, 1983 (48 FR 52435)]

PART 12—SPECIAL CLASSES OF MERCHANDISE

Sections 12.90 and 12.91, Customs Regulations, are revised to read as follows:

§ 1290 Definitions

As used in §§ 12.90 and 12.91, the term "the Act" shall mean the Public Health Service Act (42 U.S.C. 201 *et seq.*), as amended by the Radiation Control for Health and Safety Act of 1968 (42 U.S.C. 263b *et seq.*), and as further amended from time to time.

§ 12.91 Electronic products offered for importation under the Act.

(a) *Standards prescribed by the Department of Health and Human Services.* Electronic products offered for importation into the customs territory of the United States are subject to standards prescribed under section 358 of the Act (42 U.S.C. 203f) unless intended solely for export. Prescribed standards shall not apply to any electronic product intended solely for export if:

(1) Such product and the outside of any shipping container used in the export of such product are labeled or tagged to show that it is intended for export, and

(2) Such product meets all the applicable requirements of the country to which it is intended for export.

(See 21 CFR Chapter I, Subchapter J.)

(b) *Requirements for entry and release.* Electronic products subject to standards in effect under section 358 of the Act (42 U.S.C. 263f), when offered for importation into the customs territory of the United States, shall be refused entry unless there is filed with the entry, in duplicate, a declaration (FDA Form FD 2877) verified by the importer of record which identifies the products and affirms:

(1) That the electronic products were manufactured before the date of any applicable electronic product performance standard (the date of manufacture shall be specified); or

(2) That the electronic products comply with all standards in effect under section 358 of the Act (42 U.S.C. 263f), and Chapter I, Subchapter J, title 21, Code of Federal Regulations (21 CFR, Chapter I, Subchapter J), and that the certification required by section

360 of the Act (42 U.S.C. 263h) in the form of a label or tag is attached to the product; or

(3)(i) That the electronic products do not comply with all standards in effect under section 358 of the Act (42 U.S.C. 263f), and Chapter I, Subchapter J, title 21, Code of Federal Regulations (21 CFR, Chapter I, Subchapter J), but are being imported for the purpose of research, investigations, studies, demonstrations, or training, (ii) that the products will not be introduced into commerce and when the use for which they were imported is completed they will be destroyed or exported under Customs supervison, and (iii) that an exemption for these products has been or will be requested from the National Center for Devices and Radiological Health, Food and Drug Administration, in accordance with section 360B(b) of the Act (42 U.S.C. 263j); or

(4) That the electronic products do not comply with all standards in effect under section 358 of the Act (42 U.S.C. 263f) and Chapter I, Subchapter J, Code of Federal Regulations (21 CFR, Chapter Subchapter), but that a timely and adequate pention for permission to bring the products into compliance with applicable standards has been or will be filed with the Secretary of Health and Human Services in accordance with section 360 of the Public Health Service Act, as amended, and as implemented by 21 CFR 1005.21.

(c) *Notice of sampling.* When a sampling of a product offered for imporation has been requested by the Secretary of Health and Human Services, as provided for in 21 CFR 1005.10, the district director of Customs having jurisdiction over the shipment from which the sample is procured shall give to its owner or importer of record prompt notice of delivery of, or intention to deliver, the sample. If the notice so requires, the owner or importer of record shall hold the shipment of which the sample is typical and not release the shipment until notice of the results of the tests of the sample from the Secretary of Health and Human Services stating the product fulfills the requirements of the Act.

(d) *Release under bond.* If a declaration filed in accordance with paragraph (b) of this section states that the entry is being made under circumstances described in paragraph (b)(4) of this section, the entry shall be accepted only if the owner or importer of record gives a bond on Customs Form 7551, 7553, or 7595 for the production of a notification from the Secretary of Health and Human Services or his designee, in accordance with 21 CFR 1005.23, that the electronic product described in the declaration filed by the importer of record is in compliance with the applicable standards. The bond shall be in the amount required under § 113.14 of this chapter. Within 180 days after the entry or such additional period as the district director may allow for good cause shown, the importer of record shall take any action necessary to insure delivery to the district director of the notification described in this paragraph. If the notification is not delivered to the district director for the

port of entry of the electronic products within 180 days of the date of entry or such additional period as may be allowed by the district director, for good cause shown, the importer of record shall deliver or cause to be delivered to the district director those electronic products which were released. In the event that any electronic products are not redelivered to Customs custody or exported under Customs supervision within the period allowed by the district director in the Notice of Redelivery (Customs Form 4647), liquidated damages shall be assessed in the full amount of a bond given on Customs Form 7551. When the transaction has been charged against a bond given on Customs Form 7553, or 7595, liquidated damages shall be assessed in the amount that would have been demanded if the merchandise had been released under a bond given on Customs Form 7551.

(e) *Release without bond—special exemptions.* For certain electronic products the Director, National Center for Devices and Radiological Health, has granted special exemptions from the otherwise applicable standards under the Act. Such exempted products may be imported and released without bond if they meet all the criteria of the special exemption. If a special exemption is granted after the product has been imported under bond in accordance with paragraph (d) of this section, the bond conditions pertaining to the notification of compliance from the Secretary of Health and Human Services shall be deemed to have been satisfied.

(f) *Merchandise refused entry.* If electronic products are denied entry under any provision of this section, the district director shall refuse to release the merchandise for entry into the United States.

(g) *Disposition of merchandise refused entry into the United States; redelivered merchandise.* Electronic products which are denied entry under paragraph (b) of this section, or which are redelivered in accordance with paragraph (d) of this section, and which are not exported under Customs supervison within 90 days from the date of notice of refusal of admission or date of redelivery, shall be disposed of under Customs supervision within 90 days from the date of notice of refusal of admission or date of redelivery, shall be disposed of under Customs laws and regulations. However, no such disposition shall result in an introduction into the United States of an electronic product in violation of the Act (42 U.S.C. 263f, 263h).

(R.S. 251, as amended, sections 464, 498, 624, 46 Stat. 722, as amended, 728, as amended, 759) (19 U.S.C. 66, 1484, 1498, 1624)).

(T.D. 83-236)

Bonds

Approval and discontinuance of bonds on Customs Form 7587 for the control of Instruments of International Traffic of a kind specified in section 10.41a of the Customs Regulations

Bonds on Customs Form 7587 for the control of instruments of international traffic of a kind specified in section 10.41a of the Customs Regulations have been approved or discontinued as shown below. The symbol "D" indicates that the bond previously outstanding has been discontinued on the month, day, and year represented by the figures which follow. "PB" refers to a previous bond, dated as represented by the figures in parentheses immediately following which has been discontinued. If the previous bond was in the name of a different company or if the surety was different, the information is shown in a footnote at the end of the list.

Dated: November 8, 1983.

Name of principal and surety	Date of bond	Date of approval	Filed with district director/area director/amount
Argenta Products Co., Eastport, ME; Maine Bonding and Casualty Co. D 10/19/83	Oct. 7, 1975	Oct. 15, 1975	Portland, ME $10,000
Box Caribbean Line Agencies, Inc., 29 Broadway, New York, NY; Old Republic Ins. Co	Sept. 22, 1983	Sept. 26, 1983	New York Seaport $30,000
Boxline Shipping Co., Ltd., 17 Battery Place, New York, NY; Washington International Ins. Co. D 10/7/83	Jan. 11, 1982	Jan. 12, 1982	New York Seaport $10,000
J. C. Brock Corp., 95 Kentucky St., Buffalo, NY; Employers Insurance of Wausau D 11/24/83	Oct. 6, 1980	Nov. 4, 1980	Buffalo, NY $10,000
Construcciones Maritimas Mexicanas, S.A. de C.V., Carretera Monterrey, Saltillo KM. 339, Santa Catarina, Nuevo León, Mexico, Highlands Ins. Co.	Sept. 1, 1983	Sept. 16, 1983	New Orleans, LA $20,000
Flota Bananera Eucatoriana, S.A. (a foreign corp.), 42 Broadway, New York, NY; American Motorists Ins. Co.	Sept. 27, 1983	Sept. 28, 1983	New York Seaport $10,000
The Flying Tiger Line, Inc., 7401 World Way West, P.O. Box 92935, Los Angeles, CA; The Aetna Casualty & Surety Co. (PB 10/7/80) D 10/6/83 [1]	Sept. 7, 1983	Oct. 7, 1983	Los Angeles, CA $125,000
Cliff C. Henderson Ltd. Inc., 909 N. Bowser Rd., Richardson, TX; Peerless Ins. Co.	Sept.21, 1983	Oct. 5, 1983	Houston, TX $30,000

Name of principal and surety	Date of bond	Date of approval	Filed with district director/area director/amount
Fred Imbert, Inc., P.O. Box 4424, San Juan, PR; Ins. Co. of North America D 10/31/83	Sept. 23, 1982	Oct. 31, 1982	San Juan, PR $10,000
International Shipping Co., Inc., 916 Norton Bldg., Seattle, WA; Old Republic Ins. Co. (PB 10/3/68) D 10/25/83 [2]	Oct. 20, 1983	Oct. 25, 1983	Seattle, WA $10,000
Japan Line (U.S.A.) Ltd., One World Trade Center, New York, NY; Washington International Ins. Co.	Sept. 22, 1983	Sept. 23, 1983	New York Seaport $10,000
Lilly Shipping Agencies, One California St., Suite 2300, San Francisco, CA; Fidelity and Deposit Co. of MD (PB 10/1/74) D 10/1/83 [3]	Oct. 1, 1983	Oct. 1, 1983	San Francisco, CA $10,000
Pacific Resources Inc., PRI Tower, 733 Bishop St., P.O. Box 3379, Honolulu, HI; Old Republic Ins. Co.	Sept. 29, 1983	Sept. 29, 1983	Honolulu, HI $10,000
Stolt Tank Containers (U.S.A.) Inc., 8 Soundshore Dr., P.O. Box 2200, Greenwich, CT; Washington International Ins. Co.	Sept. 27 1983	Sept. 28 1983	New York Seaport $10,000
United States Steel International Inc., 600 Grant St., Pittsburgh, PA; Federal Ins. Co. (PB 6/30/81) D 10/4/83	Oct. 1, 1983	Oct. 4, 1983	New York Seaport $50,000
United Tank Containers Inc., Two World Trade Center, New York, NY; Washington International Ins. Co. D 9/27/83	July 27, 1982	Aug. 6, 1982	New York Seaport $10,000

[1] Surety is St. Paul Fire & Marine Ins. Co.
[2] Surety is St. Paul Fire & Marine Ins. Co.
[3] Surety is Pacific Ins. Co.

BON-3-10

EDWARD B. GABLE, Jr.,
Director,
Carriers, Drawback and Bonds Division.

(T.D. 83-237)

Bonds

Approval and discontinuance of consolidated aircraft bonds (air carrier blanket bonds), Customs Form 7605

The following consolidated aircraft bonds have been approved or discontinued as shown below. The symbol "D" indicates that the bond previously outstanding has been discontinued on the month, day, and year represented by the figures which follow. "PB" refers to a previous bond, dated as represented by the figures in parentheses immediately following, which has been discontinued. If the pre-

vious bond was in the name of a different company or if the surety was different, the information is shown in a footnote at the end of the list.

Dated: November 15, 1983.

Name of principal and surety	Date term commences	Date of approval	Filed with district director/area director/amount
ALM Antillean Airlines, Netherlands Antilles Corp., Dr. Albert Plesman Airport, Curacao, Netherlands Antilles; Aetna Casualty and Surety Co. (PB 7/25/80) D 11/3/83 [1]	July 25, 1982	Nov. 3, 1983	Miami, FL $100,000

The foregoing principal has not been designated as a carrier of bonded merchandise.

[1] Surety is Aetna Ins. Co.

BON-3-01

EDWARD B. GABLE, Jr.,
Director,
Carriers, Drawback and Bonds Division.

U.S. Customs Service

Proposed Rulemaking

19 CFR Part 141

Proposed Customs Regulations Amendment Relating to Identification of Merchandise Subject to an Antidumping or Countervailing Duty Order

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Proposed rule.

SUMMARY: In order to facilitate and upgrade the compilation and retrieval of antidumping and countervailing duty collection data, this document proposes to amend the Customs Regulations relating to presentation of entry papers to require importers of merchandise subject to an antidumping or countervailing duty order to include with the entry summary a unique identifying number assigned by the International Trade Administration of the Department of Commerce.

DATES: Comments must be received on or before January 20, 1984.

ADDRESS: Written comments (preferably in triplicate) should be addressed to the Commissioner of Customs, Attention: Regulations Control Branch, U.S. Customs Service, 1301 Constitution Avenue, NW., Room 2426, Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Robert Bujnicki, Duty Assessment Division, U.S. Customs Service, 1301 Constitution Ave., NW., Washington, D.C. 20229 (202-566-8121).

SUPPLEMENTARY INFORMATION:

Background

The International Trade Administration, Department of Commerce, and the Customs Service have received increasing numbers of requests for accurate data concerning the imposition of antidumping and countervailing duties. Presently, this data is collected by Customs from information provided by the importer during the entry process. Due to the fact that antidumping and countervailing duty case numbers are not always present on entry documents, at-

tempts to collect accurate data have been unsuccessful. In order to facilitate and upgrade the compilation and retrieval of antidumping and countervailing duty collection data, each antidumping and countervailing duty case or, where appropriate, each manufacturer or exporter subject to a particular antidumping or countervailing duty order, is assigned a unique identifying number by the International Trade Administration. To collect accurate data, it is essential that the importer or the importer's representative be required to provide the identifying number on the entry summary documents at the time of filing them with Customs for any merchandise subject to an antidumping or countervailing duty order. Failure to provide the identifying number at the time the entry summary is filed would result in rejection of the entry summary documents by Customs. Concerned parties would be administratively advised of the identifying number required for merchandise they are importing.

It is proposed to amend section 141.61, Customs Regulations (19 CFR 141.61), by adding a new paragraph (c) to require the identifying number.

Executive Order 12291

This document will not result in a regulation which is a "major rule" as defined by section 1(b), Executive Order 12291.

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to an initial and final regulatory flexibility analysis (5 U.S.C. 603, 604) are not applicable to this proposal because the rule, if adopted, will not have a significant economic impact on a substantial number of small entities.

Of the approximately 42,000 entries filed under final dumping and countervailing duty orders, most importers or their representatives voluntarily provide an identifying number. Customs estimates that 8,000 to 11,000 entries would be subject to the proposal's requirements. In order to provide the identifying number on the entry documents for these 8,000 to 11,000 entries, a slightly greater clerical input would be required. Customs estimates that the total dollar impact for all affected entries would require increased clerical input costing $3,000 or less. Further, Customs expects the dollar burden to decrease as more small entities acquire small business computers to automate their operations.

Customs does, however, request commenters to provide cost data with their response which detail any projected increase in costs as a result of the proposal. If this data reflects a significant economic impact and it is decided to adopt the proposal, a regulatory analysis will be prepared and published with the final rule.

In light of present data available, it is certified under the provisions of section 3, Regulatory Flexibility Act (5 U.S.C. 605(b)) that

the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities.

COMMENTS

Before adopting this proposal consideration will be given to any written comments (preferably in triplicate) that are submitted timely to the Commissioner of Customs. Comments submitted will be available for public inspection in accordance with section 103.11(b), Customs Regulations (19 CFR 103.11(b)), on regular business days between 9:00 a.m. and 4:30 p.m. at the Regulations Control Branch, Room 2426, Headquarters, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229.

AUTHORITY

This document is issued under the authority of R.S. 251, as amended (19 U.S.C. 66), sections 484, 624, 46 Stat. 722, as amended, 759 (19 U.S.C. 1484, 1624).

DRAFTING INFORMATION

The principal author of the document was John E. Elkins, Regulations Control Branch, U.S. Customs Service. However, personnel from other Customs offices and the International Trade Administration participated in its development.

LIST OF SUBJECTS

19 CFR Part 141

Customs duties and inspection, imports.

PROPOSED AMENDMENT TO THE REGULATIONS

It is proposed to amend Part 141, Customs Regulations (19 CFR Part 141), as set forth below.

PART 141—ENTRY OF MERCHANDISE

It is proposed to amend section 141.61 by adding a new paragraph (c) to read as follows:

141.61 Completion of entry and entry summary documentation.

* * * * * * *

(c) *Identification number for merchandise subject to an antidumping or countervailing duty order.* The entry summary filed for merchandise subject to an antidumping or countervailing duty order shall include the unique identifying number assigned by the Department of Commerce, International Trade Administration. Any entry summary filed for merchandise subject to an antidumping or countervailing duty order not containing the identifying number shall be rejected.

* * * * * * *

WILLIAM VON RAAB,
Commissioner of Customs.

Approved: October 25, 1983.
JOHN M. WALKER, Jr.,
Assistant Secretary of the Treasury.

[Published in the Federal Register, November 21, 1983 (48 FR 52596)]

United States Court of International Trade

One Federal Plaza

New York, N.Y. 10007

Chief Judge

Edward D. Re

Judges

Paul P. Rao
Morgan Ford
Frederick Landis
James L. Watson
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Nils A. Boe
Gregory W. Carman

Senior Judges

Herbert N. Maletz

Samuel M. Rosenstein

Clerk

Joseph E. Lombardi

Decisions of the United States Court of International Trade

(Slip Op. 83–110)

F. W. MYERS & CO., INC., PLAINTIFF *v.* THE UNITED STATES, DEFENDANT

Before BOE, *Judge.*

Court No. 80-5-00828

Opinion and Order

[Motion of plaintiff, granted; cross-motion of defendant, denied.]

(Dated November 3, 1983)

Arter, Hadden & Hemmendinger (*David B. Hopkins* on the brief); *Davis, Graham & Stubbs* (*Barry E. Cohen* on the brief), for the plaintiff.

J. Paul McGrath, Assistant Attorney General (*Joseph I. Liebman*, Attorney in Charge, International Trade Field Office, Commercial Litigation Branch and *John J. Mahon* on the brief), for the defendant.

BOE, *Judge:* Plaintiff seeks an order of this court determining that the summons commencing the above-entitled action was timely filed with regard to protest No. 3801-9-000272.[1] The defendant by cross-motion moves to sever and dismiss the said protest because of plaintiff's failure to file the summons within 180 days from the date of mailing of notice of denial pursuant to 28 U.S.C. § 2636(a).

The following facts are undisputed:

(1) The plaintiff filed protest No. 3801-9-000272 on July 19, 1979,

(2) The United States Customs Service denied the protest on September 10, 1979,

(3) The plaintiff filed a summons contesting the denial of protest No. 3801-9-000272 and others on May 23, 1980,

(4) The period of time between September 10, 1979 (the denial date), and May 23, 1980 (the date of filing the summons) is 256 days.

The plaintiff, through the affidavit of one of its employees, alleges that it never received written notice of denial of the subject protest and that an examination of the master file of Customs by the affiant in May 1980 disclosed no evidence that the customs service had mailed the notice to the plaintiff.

In support of its cross-motion defendant, through the affidavit of an employee serving as a Customs Entry Aid, describes the "invariable" practice in preparing notices of protest denial and the deposit of same in the United States mail chute located in the employee's building.

A civil action contesting a denial of a protest is barred unless commenced within the time provided by statute. The mailing of a notice of denial is a prerequisite to the commencement of the time limitation period. 28 U.S.C. § 2636(a) provides:

> (a) A civil action contesting the denial in whole or in part, of a protest under section 515 of the Tariff Act of 1930 is barred unless commenced in accordance with the rules of the Court of International Trade—

[1] This action is the subject of a proposed submission on an agreed statement of facts. No dispute exists as to the timeliness of the filing of the remaining eight protests involved in this action.

> (1) Within one hundred and eighty days after the date of mailing of notice of denial of a protest under section 515(a) of such Act * * *

See Knickerbocker Liquors Corp. v. *United States,* 78 Cust. Ct. 192, 196, 432 F. Supp. 1347, 1351 (1977).

Implicit in the term "notice," as contained in the statute, is the requirement that the protestant shall be made aware of the denial of the protest by Customs. Congress has mandated mailing as the manner of giving such notice. When the fact of mailing is placed in issues the beginning of the 180 day time limitation period for the commencement of an action is correspondingly in issue.

Proof of mailing raises a presumption of delivery. *Miller* v. *United States,* 71 Cust. Ct. 57, 62, 364 F. Supp. 1390, 1394 (1973). *See United States* v. *International Importers, Inc.,* 55 CCPA 43 (1968). This presumption, however, may be rebutted. It is recognized that evidence of non-receipt may invoke a contrary presumption. "The failure to receive a notice through the mail raises a presumption that it was not mailed." *Orlex Dyes & Chemicals Corp.* v. *United States,* 41 Cust. Ct. 168, 170, 168 F. Supp. 220, 222 (1958).[2]

When non-receipt has been established or a presumption has been raised by plaintiff's evidence, the burden of proof to demonstrate the fact of mailing shifts to the defendant. *Orlex Dyes & Chemicals Corp.,* 41 Cust. Ct. at 170, 168 F. Supp. at 222. *See Clayton Chemical & Packaging Co.* v. *United States,* 38 Cust. Ct. 617, 619, 150 F. Supp. 628, 630 (1957).

In the instant action, both parties have submitted affidavits in support of their contentions. In paragraph 3 of the affidavit submitted by plaintiff, the affiant states, "We searched our files and were unable to locate any notice of Customs Service action on this protest [protest No. 3801-9-000272], and we believe that no notification was sent to us." As this court held in *Orlex Dyes & Chemicals Corp.,* testimony of this character is sufficient to raise the presumption of non-receipt of the notice of denial. Accordingly, the burden shifts to the defendant to prove the fact of mailing.

In the affidavit submitted by defendant, the affiant details the procedures generally followed by him and/or the Customs Service at the Port of Detroit in processing protests. At paragraph 10, the affiant admits, "I have no present recollection of sending out this particular protest denial, protest No. 3801-9-000272." In paragraph 11, however, the affiant maintains that "I personally affixed the date on the original, two duplicates and master file record, and personally mailed the original to plaintiff on that date." These conflicting statements cast doubt upon the credibility as well as the reliability of the defendant's affidavit.

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[2] In *Orlex Dyes & Chemicals Corp.,* the court held that a presumption of non-mailing was raised by plaintiff's witness who testified that "to the best of his knowledge and belief, the notice had not been received, and * * * that an examination of the file did not disclose either the original or a photostatic copy * * *"

Defendant's affidavit at paragraph 17 further states that "the Master File shows that Detroit protest No. 3801-9-000272 was prepared in the usual manner and mailed to the protestant on *September 10, 1979"* (emphasis added). In plaintiff's affidavit, however, the affiant claims she examined the master file of the Customs Service in *May 1980* and found no evidence that the notice of denial of protest No. 3801-9-000272 was sent to the customs broker.

From the evidence presented the court concludes that the contradictory evidence presented by the defendant is insufficient to prove the fact of mailing. In the opinion of the court the plaintiff has satisfactorily rebutted any presumption of mailing which may have been raised by the defendant's evidence. The burden of proof which was thereby shifted to the defendant has not been met.

The inference, urged by the defendant, that the plaintiff had knowledge of the denial of the subject protest because of plaintiff's mistaken listing of the disputed entries herein as a part of a protest in a former action is, indeed, unsupported. In its motion to amend the summons to delete the entries in question which had been mistakenly listed, the plaintiff advised the court in February of 1980:

> Counsel was erroneously informed by the customs broker for the importer concerning the entries included in this protest. These entries, counsel has now learned, are included in Protest No. 3801-9-000272, *which has not yet been acted upon by the Customs Service.*[3]

Contrary to the assertion of the defendant, the foregoing representation to the court corroborates plaintiff's claim that no notice of denial had been received by it.

In view of the facts which have been submitted to the court by way of affidavit in the instant proceedings, the court is satisfied that the summons was timely filed in the above action as it relates to protest No. 3801-9-000272.

Now therefore, it is hereby

ORDERED, ADJUDGED and DECREED that the motion of the plaintiff is granted, and it is further

ORDERED, ADJUDGED and DECREED that the summons was timely filed in the above-entitled action as it relates to protest No. 3801-9-000272, and it is further

ORDERED, ADJUDGED and DECREED that the defendant's motion to sever said protest from the above action and to dismiss the above action as it relates to protest No. 3801-9-000272 be and is hereby denied.

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[3] Exhibit B—Plaintiff's Reply Memorandum in Support of Motion for Determination of Timeliness of Filing of Summons (emphasis added).

(Slip Op. 83-111)

THE WEST BEND CO., DIV. OF DART INDUSTRIES, INC., PLAINTIFF *v.* THE UNITED STATES, DEFENDANT

Court No. 80-10-01774

Before WATSON, *Judge.*

Opinion and Order on Motion To Dismiss Claim Under Generalized System of Preferences

Defendant's motion to dismiss a claim that plaintiff's importation was improperly deprived of eligibility for duty-free treatment under the Generalized System of Preferences is denied. The Court finds a legal defect in the President's action under 28 U.S.C. § 2464(c) sufficient to justify a possible remand.

[Motion to dismiss denied.]

(Decided November 3, 1983)

J. Paul McGrath, Assistant Attorney General, *Joseph I. Liebman,* Attorney in Charge, International Trade Field Office *(Barbara M. Epstein,* attorney) for the defendant.

Barnes, Richardson & Colburn (Andrew P. Vance and *Michael A. Johnson* of counsel) for plaintiff.

WATSON, *Judge:* This decision deals with the government's motion to dismiss one of plaintiff's claims. The action itself covers hot-air corn poppers imported from Hong Kong between April 1, 1980 and March 31, 1981. The importations were classified as electrothermic household appliances under Item 684.20, dutiable at the rate of 8.1 percent ad valorem.[1]

In addition to making claims for alternate clasifications, plaintiff has claimed that, if the importations are indeed properly classifiable under Item 684.20, then they should be free of duty under the Generalized System of Preferences (G.S.P.), created by Title V of the Trade Act of 1974 (19 U.S.C. §§ 2461 *et seq.*).

Defendant has moved to dismiss plaintiff's claim for duty-free treatment under the G.S.P. on the ground that the importations lost their right to that treatment by the action of the President in Executive Order No. 12204.[2] In Section 4, Annex IV of the Executive Order, Hong Kong was removed from eligibility for Item 684.20. The defendant asserts that the President's action was authorized both by the broad power given to him in 19 U.S.C.

[1] Schedule 6, Part 5, Subheading.

Electric instantaneous or storage water heaters and immersion heaters; electric soil heating apparatus, and electric space heating apparatus, electric hair dryers, hair curlers, and other electric hair dressing appliances; electric flatirons; electrothermic kitchen and household appliances; electric heating resistors other than those of carbon; all the foregoing and parts thereof:

* * * * * * *

Item 684.20 Toasters, waffle irons, skillets, ovens, stoves, coffee makers and other portable electrothermic kitchen and household appliances * * *.

[2] 45 Fed. Reg. 20,740 (1980).

The pertinent part of the Order concerning the authority and intention of the President reads as follows:

By virtue of the authority vested in me by the Constitution and statutes of the United States, including Title V of the Trade Act of 1974 (88 Stat. 2066, 19 U.S.C. § 2461, *et seq.)* as amended by Section 1111 of the

Continued footnote [2]

§ 2464(a) [3] to affect duty-free treatment, and the specific authority set out in 19 U.S.C. § 2464(c)(1)(B) [4] which requires the loss of duty-free treatment when importations of an eligible article equal or exceed 50 percent of the total value of annual importations of that article. (This will be referred to as the "50 percent limit.")

Defendant further asserts that neither the President's exercise of power under these provisions nor the findings he made are judicially reviewable.

Plaintiff argues that the President acted only under the 50 percent limit of 19 U.S.C. § 2464(c)(1)(B), and that 19 U.S.C. § 2464(d) [5] operates to exempt from the 50 percent limit those products which, on a certain date given in the law, were not in competition with products made in the United States. Plaintiff argues that the exemption takes those products entirely outside the exercise of the President's power to end preferred treatment under 19 U.S.C. § 2464(c) and allows the question of whether or not the importations were competitive with U.S. products to be tried in Court in the same manner as a dispute about the product's classification or valuation.

It is the prospect of a trial on the issue of "competitiveness" which requires this motion to be disposed of prior to the alterna-

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Trade Agreements Act of 1979 (93 Stat. 315), section 604 of the Trade Act of 1974 (88 Stat. 2073, 19 U.S.C. § 2483) and Section 503(a)(2)(A) of the Trade Agreements Act of 1979 (93 Stat. 251), and as President of the United States of America, *in order to modify, as provided by Section 504(c) of the Trade Act of 1974 (88 Stat. 2070, 19 U.S.C. § 2464(c), the limitations on preferential treatment for eligible articles from countries designated as beneficiary developing countries,* to adjust the original designation of eligible articles taking into account information and advice received in fulfillment of Section 503(a) and 131–134 of the Trade Act of 1974 (88 Stat. 2069, 19 U.S.C. § 2463; 88 Stat. 1994, 19 U.S.C. § 2151 *et seq.),* and to modify the designations of beneficiary developing countries in accord with my notifications to the Congress of September 28, 1979, and March 3, 1980, and in accord with technical changes in the identity of certain beneficiary developing countries, it is hereby ordered: [emphasis supplied]

* * * * * * *

[3] § 2464. *Limitations on preferential treatment.*

(a) *Withdrawal, suspension, or limitation of duty-free treatment.* The President may withdraw, suspend, or limit the application of the duty-free treatment accorded under section 501 (19 U.S.C. § 2461) with respect to any article or with respect to any country; except that no rate of duty may be established in respect of any article pursuant to this section other than the rate which would apply but for this title (19 U.S.C. § 2461 *et seq.;* amendment to 19 U.S.C § 1202). In taking any action under this subsection, the President shall consider the factors set forth in sections 501 and 502(c) (19 U.S.C. §§ 2461 and 2462(c)).

* * * * * * *

[For text of 19 U.S.C. §§2461 and 2462(c) see note 6 *infra.*]

[4] § 2464. *Limitations on preferential treatment.*

* * * * * * *

(c) Designation, continuance of designation, or redesignation as beneficiary developing country notwithstanding increases in exports to United States. (1) Whenever the President determines that any country—

* * * * * * *

(B) except as provided in subsection (d), has exported (either directly or indirectly) to the United States a quantity of any eligible article equal to or exceeding 50 percent of the appraised value of the total imports of such article into the United States during any calendar year,

then, not later than 90 days after the close of such calendar year, such country shall not be treated as a beneficiary developing country with respect to such article, except that, if before such 90th day, the President determines and publishes in the Federal Register that, with respect to such country—

(i) there has been an historical preferential trade relationship between the United States and such country,

(ii) there is a treaty or trade agreement in force covering economic relations between such country and the United States, and

(iii) such country does not discriminate against, or impose unjustifiable or unreasonable barriers to, United States commerce,

then he may designate, or continue the designation of, such country as a beneficiary developing country with respect to such article.

* * * * * * *

[For text of the "subsection (d)" mentioned above see note 5 *infra.*]

[5] § 2464. *Limitation on preferential treatment.*

* * * * * * *

(d) *Domestic non-production of like or directly competitive articles.* Subsection (c)(1)(B) does not apply with respect to any eligible article if a like or directly competitive article is not produced on the date of enactment of this Act [enacted Jan. 3, 1975] in the United States.

* * * * * * *

tive claims for classification even though, as a logical matter, a victory for plaintiff on an alternate claim could moot any disputes connected with classification under Item 684.20.

Plaintiff further argues that if indeed the President was empowered to make the competitive evaluation called for by § 2464(d) his evaluation was flawed by a misconception as to the meaning of the word "article," so that by considering "eligible articles" to be abstract tariff item numbers he could not possibly make the determination on the competitiveness of *individual* products which is contemplated by § 2464(d).

In this decision the Court defines the nature of its judicial review of the President's action, analyzes the statutory provisions, finds that the President acted only under the 50 percent limit, holds that he was required to make a finding on the subject of competitiveness under § 2464(d) and did not act in accordance with the law on that matter. The Court is led to deny the motion to dismiss and to conclude that remand for the purpose of the making of a proper determination under § 2464(d) will be the proper remedy if plaintiff's alternative claims for classification are not successful.

To begin with, the Court explains why it limits its judicial review of the President's action to his authority under 19 U.S.C. § 2464(c) and the 50 percent limit.

In general, the statutory provisions for the G.S.P. display a considerable delegation of authority to the President in granting, withdrawing, suspending or limiting the duty-free treatment of eligible articles. In the course of the exercise of his authority the President has to take into account various considerations or make certain findings. It is well established that with respect to his exercise of discretion and the factual correctness of his underlying findings there is no judicial review. *United States* v. *George S. Bush & Co.*, 310 U.S. 371 (1940). Nevertheless, judicial review is available to determine whether the President's action was in conformity with the law. This includes such questions as whether he acted within his authority, whether he acted with a correct understanding of the language of the law, and whether he acted in conformity with its procedures.

In this case, the Court does not examine the President's action in terms of his authority under § 2464(a) because he did not specifically refer to that provision. This is not simply a glorification of a technical recitation of authority. The two sources of authority available to the President differ completely in substance and procedure. The exercise of power under § 2464(a) is a voluntary action by the President which requires the consideration of the diverse and delicate factors set out in 19 U.S.C. § 2461 and 2462(c).[6]

[6] § 2461. *Authority to extend preference.*

The President may provide duty-free treatment for any eligible article from any beneficiary developing country in accordance with the provisions of this title (19 U.S.C. § 2461 *et seq.*; amendments to 19 U.S.C. § 1202). In taking any such action, the president shall have due regard for—

Continued

The discretionary authority of § 2464(a) is not a source of authority which can be presumed to have been used in the face of a specific recitation of § 2464(c). The latter is a completely different species of authority. Under it, the President is *compelled* to act by reason of the occurrence of objectively measured events (in this case, the reaching of the 50 percent limit), unless he makes certain determinations described in § 2464(c)(1) (i), (ii) and (iii).[7] He must also take into consideration the provision in § 2464(d) exempting non-competitive articles and make that determination.[8]

When the President recites § 2464(c) as the specific source of his action he is indicating that he acted under compulsion and therefore had to make a determination of whether any articles should be exempt from the force of that compulsion. It would be entirely presumptuous for the Court to take this specific recitation of authority and change it to an unspecified source of authority which indicates a willful action by the President and presumes that a different and difficult set of considerations have been taken into account.

All this differs from those cases in which the President's acts and his supporting findings and procedures are the same regardless of the authority relied on. In those events it may be possible for Courts to seek out alternative, unspecified sources of authority because the action of the President, as well as his findings and procedures, will remain the same. This important point distinguishes this case from those in which alternative sources of authority have been approved. See, for example, *Yoshida Int'l., Inc.* v. *United States,* 63 CCPA 15, C.A.D. 1160; 526 F2d 560 (1975).

This case is also distinguishable from the recent case of *Florsheim Shoe Co.* v. *United States,* 6 CIT —, Slip Op. 83-66 (July 7, 1983) (appeal pending) in which an action challenging the removal of articles from the G.S.P. was dismissed for failure to state a

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(1) the effect such action will have on furthering the economic development of developing countries;
(2) the extent to which other major developed countries are undertaking a comparable effort to assist developing countries by granting generalized preferences with respect to imports of products of such countries; and
(3) the anticipated impact of such action on United States producers of like or directly competitive products.

§ 2462. *Beneficiary developing country.*

* * * * * * *

(c) *Factors determinative of whether to designate country as beneficiary developing country.* In determining whether to designate any country a beneficiary developing country under this section, the President shall take into account—
(1) an expression by such country of its desire to be so designated;
(2) the level of economic development of such country, including its per capita gross national product, the living standards of its inhabitants, and any other economic factors which he deems appropriate;
(3) whether or not the other major developed countries are extending generalized preferential tariff treatment to such country; and
(4) the extent to which such country has assured the United States it will provide equitable and reasonable access to the markets and basic commodity resources of such country.

[7] See note 4 *supra.*

[8] Here the Court indicates that the exemption in § 2464(d) is part of the Presidential determination. A complete exemption which is determined only in administrative or judicial proceedings after entry is simply incongruous and leaves the actions of the President affecting eligible articles too imprecise and too dependent on later events to be reasonably intended by Congress. Although separately stated, the Court sees the exemption expressed in § 2464(d) as a necessary part of the President's exercise of power in his administration of the G.S.P. From this it follows that the finding of whether or not articles are competitive is not a subject for trial. On this point plaintiff must accept the factual finding of the President if it is made with a correct understanding of the law.

claim. In that action the President had relied on *both* § 2464(a) and § 2464(c), in which case the broad authority of the former was sufficient to cure any possible defect in the exercise of the latter authority. In fact, the use of both authorities has the appearance of unnecessary duplication because § 2464(a) alone is certainly sufficient to remove an eligible article. In any event, it hardly makes sense for this Court to presume in this case that the President, without saying so, would use duplicative authority, particularly when its use involves alternative considerations and procedures.

Within § 2464(c) there is no dispute that the President acted pursuant to the 50 percent limit expressed in § 2464(c)(1)(B). This leads to the main question concerning the legal and procedural correctness of his action.

The dispute between the parties centers on the meaning of the word "articles" in the law of the G.S.P. The government argues that it always means "Tariff item" (which may encompass a multitude of separate products). The government's interpretation of the term as a tariff item number is not in dispute when it comes to granting duty-free treatment to "any eligible article" or determining whether "a quantity of any eligible article" has reached the 50 percent limit. This definition, however, cannot hold true when the law states that the 50 percent limit does not apply with respect to an "eligible article" if a competitive "article" is not produced in the United States. At that point it is impossible to think that the law is talking of tariff item numbers which contain disparate groups of products. It is clear and eminently reasonable that Congress did not want to have *individual* products removed from preferential treatment by means of the 50 percent limit if they were not competitive with American products.

The legislative history is not particularly helpful on this point. An interesting passage in the Senate Report on the Trade Reform Act of 1974 speaks of the terms article as "in general" referring to tariff item numbers but goes on to mention the making of exceptions to insure "that an article is a coherent product category." [9] This is certainly not a justification for maintaining an equivalence between eligible articles and item numbers when it produces absurdities, as it would in § 2464(d). There is yet another statutory provision in which the concept of an "article" as an item number (containing disparate products) would not make sense. That provision is § 2463(b) which sets out the portions of the value of the eligible article which must be attributable to the eligible country in order for the "article" to obtain duty-free treatment.[10] In short, it

[9] S. Rep. No. 93-1298, 93rd Cong. 2d Sess. pp. 223-226.

[10] § 2463. *Eligible articles.*

* * * * * * *

(b) *Eligible articles qualifying for duty-free treatment.* The duty-free treatment provided under section 501 (19 U.S.C. § 2461) with respect to any eligible article shall apply only—

(1) to an article which is imported directly from a beneficiary developing country into the customs territory of the United States; and

Continued

is plain that the word "article" must take on such meaning as is reasonable and in accordance with legislative intention in the context of each separate provision. It necessarily follows that the term can mean different things in different parts of the G.S.P. law.

The extent to which "article" may mean other things elsewhere in the Act is not controlling here. In § 2464(d) it *must* mean an individual product. The identity of "article" and "item number" cannot be maintained when it comes to deciding whether or not articles were competing, unless, of course, an item number covers only one distinct product.

That was the situation in *Florsheim Shoe Co.* v. *United States, supra,* when, *inter alia,* buffalo leather from India was excluded from duty-free treatment under the G.S.P. In that event a single product, buffalo leather, was the entire content of a single item number (Item 121.55). Consequently, it could be presumed that, even though the exclusion was done by item number, the President had found the single product involved was competitive with an American product and therefore, to the extent that it had reached the 50 percent limit, it could not remain on the G.S.P. by virtue of § 2464(d).

Here, with the exclusion of an item number containing on its face a variety of separate products, it is clear that a determination as to the competitive status of individual products was not made. Whatever may be the plasticity of the term "article" elsewhere in the administration of the G.S.P., it cannot justify or support an impossible comparison of competition either between tariff item numbers or disparate groups of products.

This holding by the Court constitutes a finding of procedural irregularity in the removal from eligibility of the Item in which the corn poppers were classified. The irregularity resulted from a misinterpretation of the term "article" as used in 19 U.S.C. § 2464(d). Aside from requiring the denial of defendant's motion to dismiss, the Court is of the opinion that the appropriate remedy for the defect it has found in the Presidential action is to remand for the purpose of allowing the correct procedures to be followed with respect to these corn poppers. However, since further steps consistent with classification under Item 684.20 would be pointless if plaintiff's claims for alternative classifications are correct, those alternative classifications must first be considered. Consequently, plaintiff must decide if it wishes to pursue its alternative claims. If it does, the Court will try the issues raised by those claims. If those are decided adversely to plaintiff, or if the plaintiff chooses not to proceed as to those claims, the case will be remanded so that the

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(2) If the sum of (A) the cost or value of the materials produced in the beneficiary developing country or any 2 or more countries which are members of the same association of countries which is treated as one country under section 502(a)(3) (19 U.S.C. § 2462(a)(3)), plus (B) the direct costs of processing operations performed in such beneficiary developing country or such member countries is not less than 35 percent of the appraised value of such article at the time of its entry into the customs territory of the United States.

President may make findings under 19 U.S.C. § 2464(d) in conformity with this opinion.

It should be noted that those findings will not subsequently be judicially reviewable other than for their procedural regularity and conformity to the law.

For the reasons given above defendant's motion to dismiss is DENIED, and it is further

ORDERED that plaintiff shall notify the Court within 20 days of the date of entry of this Order of its intentions regarding its alternative claims.

(Slip Op. 83-112)

UNITED STATES STEEL CORPORATION, REPUBLIC STEEL CORPORATION, ET AL., PLAINTIFFS *v.* UNITED STATES OF AMERICA, ET AL., DEFENDANTS, AND COMPANHIA SIDERURGICA PAULISTA, ET AL., DEFENDANTS-INTERVENORS

Consolidated Court No. 82-10-01361

UNITED STATES STEEL CORPORATION, REPUBLIC STEEL CORPORATION, ET AL., PLAINTIFFS *v.* UNITED STATES OF AMERICA, ET AL., DEFENDANTS

Consolidated Court No. 82-12-01707

Before WATSON, *Judge.*

Memorandum Opinion and Order

(Dated November 3, 1983)

WATSON, *Judge:* In this opinion the Court rules on a number of procedural motions of more than passing interest.

Plaintiffs have moved to have the briefs which they have filed, or will file, in Court No. 82-10-01361 (in connection with the issues arising from the *preliminary* determination of the International Trade Administration of the Department of Commerce (ITA) on certain carbon steel products from Brazil) utilized for judicial review under Rule 56.1 of the same issues as they arise from the *final* Brazil determination (the challenge to which, originally begun in Court No. 83-01-00152, was later consolidated with Court No. 82-10-01361). In the separate briefing which is underway in Court No. 82-10-01361 these issues have been termed "creditworthiness," "equity infusions," "valuation methodologies," and "time periods" (alleged disregard of current information).

The government has no objection to this procedure and the Court approves it.

The plaintiffs have also asked that their briefs in Court No. 82-10-01361 on the subject of "valuation methodologies" and "time periods" be utilized for review under Rule 56.1 in Court No. 82-12-

01707, brought to contest a final subsidy determination involving steel from Spain. There appears to be no dispute that the issues of "valuation methodologies" and "time periods" are also involved in that case.

The government does not dispute the identity of issues in these cases but opposes the motion, terming it a disguised attempt to achieve consolidation. (In Slip Op. 83–65 (June 28, 1983) the Court rejected the consolidation of Court No. 82–12–01707 (Spain) and 82–10–01361 in the course of dealing with a raft of procedural matters.)

The government proposes instead that Court No. 82–12–01707 be suspended pending the resolution of Court No. 82–10–01361, in order to avoid unnecessary filing of repetitious briefs and in order to possibly have the issues narrowed by the result in Court No. 82–10–01361.

Absent a more concrete enhancement of the disposition of the action in Court No. 82–12–01707, the Court is loath to suspend cases which have been given a statutory priority in 28 U.S.C. § 2647(4). For this reason, defendant's proposal is rejected and its cross-motion to suspend is Denied.

Although plaintiffs' proposal does seem to be one way of moving more rapidly toward disposition of Court No. 82–12–01707, it now appears to the Court to be unnecessarily complicated and inferior to straightforward consolidation. The Court's earlier refusal to consolidate in Slip Op. 83–65 *supra,* came about more from preoccupation with a motion to dismiss than a definite conclusion that consolidation was inapproprite. At the present time the Court sees an identity of two issues and a prospect of speedy and efficient dispositon, which make consolidaton the best alternative. If at some point, the introduction of Spain into Court No. 82–10–01361 requires some adjustment to the future briefing schedule, the timing can be altered somewhat, but the movement towards disposition will still be more efficient than if the actions were kept apart.

For the reasons stated, it is hereby

ORDERED that Court No. 82–12–01707 be consolidated with Court No. 82–10–01361, which action shall proceed under the latter number without the need for further pleadings and it is further

ORDERED that all issues in the consolidated action may be submitted for review under Rule 56.1. All briefs previously submitted shall be considered as filed for the issues now contained in the action to the extent that they relate to those issues. All further briefing shall be on the same schedule and terms as has been established.

(Slip Op. 83-113)

SAMUEL KATUNICH, JANE H. M. REGO AND GUY SERRA, PLAINTIFFS *v.* RAYMOND J. DONOVAN, SECRETARY OF LABOR, UNITED STATES DEPARTMENT OF LABOR, DEFENDANT

Court No. 81-9-01158

Before: RE, *Chief Judge.*

Memorandum and Order

(Dated November 3, 1983)

RE *Chief Judge:* In this action, plaintiffs, on behalf of the former employees of U.S. Steel's Monroeville Research Laboratory, challenge the Secretary of Labor's denial of certification of eligibility for benefits under the worker adjustment assistance program of the Trade Act of 1974, 19 U.S.C. §§ 2101-2487 (1967 & Supp. IV 1980). Plaintiffs move for an order allowing access to all confidential information contained in the administrative record herein, and defendant cross-moves for a protective order barring any disclosure.

The Secretary of Labor denied plaintiffs' certification because they failed to satisfy the third eligibility criterion of section 222 of the Trade Act of 1974, 19 U.S.C. § 2272(3) (1976). The Secretary's investigation disclosed that plaintiffs were engaged in activities related to the production of steel. Nevertheless, they could only obtain certification if their separation from employment "was caused importantly by a reduction for their services originating at facilities whose worker's independently meet the statutory criteria * * * and that reduction must be directly related to the product impacted by imports." 46 Fed. Reg. 35825 (1981). Since the Secretary found that production at other U.S. Steel facilities was not adversely affected by imports, he concluded that plaintiffs' separation was not caused by a deadline in production at those plants whose workers independently met the criterion of section 222(3). Therefore, certification was denied, and plaintiffs brought this action.

In an earlier opinion, *Katunich* v. *Donovan,* 5 CIT —, Slip Op. 83-60 (June 17, 1983), the court first considered plaintiffs' motion for discovery and defendant's cross-motion. After reviewing the administrative record and finding it incomplete as to the factual basis for the Secretary's determination, the court withheld decision on the motions and remanded the case to the Secretary for the purpose of furnishing a more complete record. The Secretary has complied with the remand order, and the court may now consider the discovery request.

The information in question consists of the following: (1) a description of the functions and responsibilities of the Executive Offices of U.S. Steel; (2) data regarding the number of employees, layoffs, recalls and terminations at U.S. Steel's Executive Offices and research lab; and (3) the tonnage produced by various U.S. Steel

facilities, the subject of other trade adjustment assistance investigations.

Plaintiffs contend that they seek disclosure of the confidential information to assist them with their case in chief, and to determine "whether the sealed information correctly reflects the true employee and production data at U.S. Steel Corporation for the period in question."

Defendant maintains that (1) plaintiffs have failed to state the nature of the information required, and in what respect it is essential for the prosecution of plaintiffs' case; (2) even under a protective order, the release of confidential business data to *pro se* parties, who are not bound by the rules of professional responsibility and conduct applicable to attorneys, may well discourage cooperations by businesses and others whose participation in the Secretary's investigation is essential; and (3) there would be difficulty in fashioning a protective order allowing *pro se* parties access to confidential information, and, at the same time, ensuring that the confidential information would not be disseminated in violation of the court's order.

Defendant further contends that plaintiffs had an opportunity to present facts in support of their petition at the administrative level, yet failed to exercise that right. Thus, defendant maintains that discovery is inappropriate at this stage of the proceeding for the purpose of refuting or supplementing the data in the administrative record. Moreover, defendant views discovery as inappropriate since the court is required by law to review the Secretary's determination on the basis of whether that determination is supported by substantial evidence as contained in the administrative record. 19 U.S.C. § 2395 (Supp. IV 1980).

Plaintiffs assert that their lack of formal legal training should not be a barrier to obtaining equal treatment before the law. Plaintiffs state that they would abide by any strictures or restraints imposed upon them to assure confidentiality of the information. Plaintiffs also submit that their ability to proceed, and ultimately their eligibility for adjustment assistance benefits, should not be prejudiced by the lack of any information that may have served as a basis for the Secretary's denial of certification of eligibility.

In exercising its discretion to release confidential information, the court must consider the need of plaintiffs for data in the prosecution of their case as well as the need of the Secretary to obtain confidential business information for future administrative proceedings. *American Spring Wire Corp.* v. *United States*, 5 CIT —, Slip Op. 83–54, 566 F. Supp. 1538 (June 10, 1983). In every case, the party seeking disclosure must establish that the information sought is sufficiently relevant and necessary to the case to outweigh the potential harm of disclosure to the party from whom the information is sought. *Bruno & Stillman, Inc.*, v. *Globe Newspaper Co.*, 633 F.2d 583, 597 (1st Cir. 1980). *Hartley Pen Co.* v. *U.S.*

Dist. Court for So. Dist. of Calif. 287 F.2d 324, 331 (9th Cir. (1961)). *See 8 C. Wright & A. Miller, Federal Practice & Procedure,* § 2043, at 301–302 (1970). Finally, the court must balance plaintiffs' need for disclosure against the need of the government in the public interest to maintain confidentiality. *Nakajima All Co.* v. *United States,* 2 CIT 170, 174 (1981).

Of course, it is basic that each case turns on its own particular facts and circumstances. *See American Spring Wire Corp.* and cases cited therein, 566 F. Supp. at 1540. Moreover, prior to deciding whether to permit disclosure of confidential business information, the court may make an *in camera* inspection of the requested documents to determine their relevance. *See Besly-Welles Corp.* v. *Balax, Inc.,* 43 F.R.D. 368 (D.C. Wis. 1968).

The court has made an *in camera* examination of the documents in question, and has considered the competing needs of the parties and the public interest. As a result of this examination, the court grants plaintiffs' motion for disclosure but only as to the employee and production data contained on pages 162–168 and 213–215 of the administrative record, and subject to the terms and conditions of the court's protective order. Accordingly, defendant's cross-motion barring disclosure is denied.

The court has also concluded that the description of the functions and responsibilities of the Executive Offices of U.S. Steel, appearing on page 162 of the record, bears little relevance to the Secretary's denial of certification. Therefore, plaintiffs are not entitled to access to that portion of the confidential administrative record.

The court fully appreciates the need to encourage the submission of business information, confidential and nonconfidential, to enable the Secretary of Labor properly to administer the worker adjustment assistance program. The court is also aware of the potential harm to those businesses that submit confidential information if that information were to be made public. Nevertheless, the court is equally sensitive to the need of a party particularly a *pro se* litigant, "to fully prepare and present its legally authorized challenge to an administrative determination and to do so based on all available relevant material." *Connors Steel Co.* v. *United States,* 85 Cust. Ct. 112, 113, C.R.D. 80–9 (1980).

As to the relevance of the information sought to be disclosed, there is no doubt that employee and production data are essential to the Secretary's determination to certify a group of workers as eligible for trade adjustment assistance benefits. Without access to that data, the court is unable to see how plaintiffs can evaluate the basis of the Secretary's determination and present effective arguments designed to show that determination is not supported by substantial evidence. For the court to require plaintiffs to proceed blindly would inhibit the fair and just adjudication of the issues.

Furthermore, the employment and production data covers the period of January 1978 through August 1980. In view of the age of

the data, the potential harm to U.S. Steel from disclosure and "any sensitivity previously possessed by this data has become *de minimis.*" *Japan Exlan Co.* v. *United States,* 1 CIT 286, 288 (1980). Finally, the court rejects defendant's contention that disclosure should be denied because plaintiffs failed to state a particularized need for the confidential information. For the court to require the specificity sought by defendant would, in effect, require the court to prejudge "the existence of substantial evidence" for the Secretary's denial of certification. "Aside from demanding impossible prescience from the plaintiffs such an inquiry would result in a distorted and piecemeal judicial review." *Atlantic Sugar Ltd.* v. *United States,* 85 Cust. Ct. 128, 129, C.R.D. 80–14 (1980).

For the above reasons, it is hereby

ORDERED, that defendant's cross-motion barring disclosure is denied; and plaintiffs' motion for disclosure is granted, subject to the following terms:

1. All confidential employment and production data contained on pages 162 through 168 and 213 through 215 of the administrative record, transmitted to the court in connection with this action, shall be available to plaintiffs for examination and copying at the Office of the Clerk of this court during the business days of the 30-day period commencing on the date of entry of this order;

2. Plaintiffs shall not disclose this confidential information to anyone other than an expert permitted under paragraph 4 of this order;

3. Plaintiffs or any expert permitted under paragraph 4 of this order shall not use this confidential information for purposes other than this litigation or any remand or appeal of this matter;

4. Should plaintiffs consider the services of an expert necessary to the preparation of their case in this litigation, and the expert's services require the use of the confidential information in question, the plaintiffs shall, prior to providing confidential information to an expert, notify counsel for defendant of their desire to retain an expert and shall provide counsel for defendant with: (1) the *curriculum vitae* of the proposed expert; (2) a description of the measures for safeguarding the confidential information to be made available to the proposed expert; (3) a signed statement from the expert submitting himself or herself to the jurisdiction of the Court of International Trade and such reasonable sanctions as this court may deem appropriate in the event of a breach of the conditions of this order; and (4) a certification that the proposed expert is independent of the steel industry. No later than ten days from the date of receipt of the above-described information, defendant shall either consent to the use of the expert proposed by plaintiffs or indicate his objections in writing. If the parties are unable to agree upon an acceptable expert within ten days, plaintiffs may file an appropriate motion with the court;

5. Plaintiffs shall not make more than five (5) copies of any page of the confidential portion of the administrative record and shall maintain a record of any and all copies of confidential information made, to whom they were provided and when they are returned. All such copies shall be clearly marked as containing confidential information and that they are to be returned at the conclusion of this litigation;

6. Whenever any confidential portion of the administrative record subject to this protective order is not being used, it shall be stored in a locked vault, safe, safety deposit box, or other suitable container, in a designated location mutually agreed upon by plaintiffs and counsel for defendant. Plaintiffs shall inform the court in writing of the location;

7. Any documents, including briefs and memoranda, containing any of the confidential information subject to this order, which are filed with the court in this case or used for any other purpose, shall be conspicuously marked as containing information which is not to be disclosed to the public and arrangements shall be made with the Clerk of this court to retain those documents under seal, permitting access only to the court, court personnel authorized by the court to have access, plaintiffs and counsel for the defendant. Copies of all the foregoing documents, but with the confidential information deleted, shall be filed with the court at the same time that the documents containing the confidential information are filed;

8. Any briefs or memoranda containing confidential information shall be served on the other parties in a wrapper conspicuously marked on the front "Confidential—to be opened only by plaintiffs and counsel for the defendant," and shall be accompanied by a separate copy from which the confidential information has been deleted;

9. Upon the conclusion of this litigation and any appeal or remand of this matter, plaintiffs shall return all copies of the confidential portion of the administrative record, including copies held by persons authorized under this order to have access thereto. The return of those copies shall be accompanied by a certificate executed by plaintiffs attesting to the fact that the provisions of this paragraph have been complied with in all respects; and

10. Plaintiffs or counsel for defendant shall promptly report any breach of the provisions of this order to the court.

(Slip Op. 83–114)

ITT SEMICONDUCTORS, PLAINTIFF *v.* UNITED STATES, DEFENDANT

Court No. 80–9–01521

Before CARMAN, *Judge.*

Memorandum

[Motion to dismiss granted.]

(November 3, 1983)

Barnes, Richardson & Colburn (Rufus Jarman, on the motion) for the plaintiff. *J. Paul McGrath,* Assistant Attorney General; *Joseph I. Liebman,* Attorney in Charge, International Trade Field Office, Commercial Litigation Branch (*Deborah Rand* on the motion) for the defendant.

CARMAN, *Judge:* This matter is before me on the parties' cross-motions for summary judgment and defendant's alternative motion to dismiss.

Plaintiff commenced this suit to recover the sum of $48,153.04 which was paid to the defendant as part of an overall settlement of a penalty action. Plaintiff filed a protest with respect to the payment of this sum and it was denied as being a decision that was not protestable. Defendant moves to dismiss arguing that since the decision as to which the protest was filed was not a protestable decision pursuant to 19 U.S.C. § 1514 (1976 & Supp. IV 1980), this court lacks subject matter jurisdiction in this matter. After a recitation of the background facts, as alleged by the plaintiff, this threshold jurisdictional question will be addressed.

Plaintiff is the importer of record of numerous entries of transistors exported from Portugal and other countries which entered into the United States during the years 1969 through 1974. Approximately sixty-two of these entries imported in 1969 and 1970 are the subject of this suit. These transistors were manufactured using certain U.S. components called "dice," for which plaintiff claimed and was granted an allowance of duty under TSUS item 807.00. An amended prepenalty notice was issued to ITT Semiconductors ("ITT") by the United States on June 9, 1976, advising that the United States was contemplating the assessment of penalties in the amount of $60,470,322.00. The notice covered 805 consumption entries filed between July 23, 1969 and November 15, 1974.

The notice alleged that foreign assemblers had commingled foreign and domestic components in the manufacture of the transistors making such components ineligible for duty allowance under TSUS item 807.00, and that, regardless of the country of origin, dice components were not entitled to item 807.00 treatment because they were separated after importation by the "scribe and break" technique. The notice alleged that by claiming an item 807.00 allowance for dice components under such circumstances, plaintiff had violated the provisions of 19 U.S.C. § 1959. Other allegations appeared in the notice relating to entries not covered by this litigation. The Customs Service subsequently issued a Notice of Penalty in the amount of $12,649,099.00. The notice reflected the deletion of a considerable number of entries based upon a decision in *United States* v. *Texas Instruments Inc.,* 64 CCPA 24, C.A.D.

1178, 545 F.2d 739 (1976). An amended Notice of Penalty dated March 21, 1978 reduced the amount to $10,118,474.00.

On July 7, 1978, plaintiff filed a Petition for Mitigation pursuant to 19 U.S.C. § 1618 [1] and in this petition addressed the inclusion of the entries that are the subject of this action. Plaintiff believes that these entries had been included in the prepenalty and penalty notices because of the discredited position of the Customs Service that an allowance under item 807.00 could not be made for the U.S. components subject to a "scribe and break" separation. The intervening decision in *United States* v. *Texas Instruments, supra,* determined that such separation did not disqualify the U.S. components from receiving an allowance of duty under item 807.00.

On April 18, 1979, the Customs Service responded to plaintiff's Petition for Mitigation, and noting the *Texas Instruments* decision changed its position that an item 807.00 claim could not have been allowed on the subject entries. The Customs Service, however, requested payment of "withheld duties" for the subject entries in the amount of $48,153.04.

Plaintiff filed its First Supplemental Petition for Mitigation on September 13, 1979, arguing that since the Customs Service had concluded that plaintiff had reasonable cause to believe that the components included in the subject entries were of U.S. origin, plaintiff should not be required to pay "withheld duties" on the entries as demanded in the April 18 Customs Service letter.

On September 27, 1979, the Customs Service responded to plaintiff's First Supplemental Petition stating, in a letter by the District Director of Customs at Miami, as follows:

> We wish to point out that in our prior decision we did not find that the dice were products of United States origin; rather, we found that ITT had reasonable cause to believe that the transistors imported from Standard Electrica were assembled from dice produced in the United States. Therefore, the loss of revenue attributable to the item 807.00 claims for dice were not included in the determination of the mitigated amount. Nevertheless, the mitigated amount was conditioned upon the payment of the actual loss of $48,153.04, because ITT failed to supply documentation that all of the dice used in the assembly of the transistors were produced in the United States.* * *

Plaintiff's Appendix G, at 2.

The Customs Service mitigated the claim for forfeiture value to $289,662.00 with the provision that the actual loss of revenue of $153,412.00 also be deposited. Customs further advised that if the amounts of $289,662.00 and $153,412.00 were not paid by plaintiff, a

[1] 19 U.S.C. § 1618 (1976) provides in part:
[T]he Secretary of the Treasury, if he finds that such fine, penalty, or forfeiture was incurred without willful negligence or without any intention on the part of the petitioner to defraud the revenue or to violate the law, or finds the existence of such mitigating circumstances as to justify the remission or mitigation of such fine, penalty, or forfeiture, may remit or mitigate the same upon such terms and conditions as he deems reasonable and just, or order discontinuance of any prosecution relating thereto.* * *

claim for forfeiture value in the amount of $10,118,474.00 would be referred to the United States Attorney. Plaintiff paid the amount requested by Customs by October 4, 1979.[2]

Plaintiff filed a Second Supplemental Petition for Mitigation on November 7, 1979, offering to supply additional proof in the form of sworn testimony or otherwise, to establish to the Customs Service's satisfaction that the dice included in the transistors covered by the subject entries were of U.S. origin. This Second Supplemental Petition noted that plaintiff regarded the demand for $48,153.04 as "withheld duties" and as a retroactive assessment of duties in violation of section 514 of the Tariff Act of 1930, as amended, 19 U.S.C. § 1514, and requested a refund of these duties.

Plaintiff argued that it paid the full amount demanded by the Customs Service in its mitigation offer only to avoid referral to the United States Attorney and the institution of a claim for forfeiture value in excess of ten million dollars. Plaintiff contended that since no violation of 19 U.S.C. § 1592 had been found with respect to the approximately sixty-two entries imported in 1969 and 1970 that were the subject of the suit, the Customs Service had no right to require payment of withheld duties on these entries as a condition of mitigating the claims for forfeiture value with respect to other entries.

The Customs Service responded on January 17, 1980 to the Second Supplemental Petition by refusing to refund the amount of $48,153.04 and advised that no further petition would be considered. By letter dated January 29, 1980, the District Director at Miami forwarded a copy of this last letter in which it noted that it was attaching a copy of the final decision rendered by the Customs Service.

Plaintiff mailed a protest to the District Director at Miami on December 21, 1979, which was marked received by the Customs Service on December 27, 1979. However, the protest was returned by the Customs Service at the port of West Palm Beach, Florida, on or about February 28, 1980 with the explanation: "This matter is not subject to protest." Plaintiff wrote to the Customs Service on March 27, 1980, returning the protest. It was subsequently denied on April 3, 1980, on the grounds that the issue was not subject to protest. Suit was commenced in this court on September 25, 1980. Oral argument was duly held on the parties' cross-motions for summary judgment and defendant's alternative motion to dismiss.

For this court to have subject matter jurisdiction in this case, the plaintiff must have filed a timely protest pursuant to 28 U.S.C. § 1581(a) (Supp. V 1981).[3] Although a protest was filed in this case,

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[2] Although the full amount was paid by the plaintiff, the payment was not submitted by means of one check. Among the checks submitted to total the full amount, a check in the amount of $48,153.04 was submitted.

[3] 28 U.S.C. § 1581(a) (Supp. B 1981) provides:

The Court of International Trade shall have exclusive jurisdiction of any civil action commenced to contest the denial of a protest, in whole or in part, under section 515 of the Tariff Act of 1930.

the question is whether or not the decision which the plaintiff protested was one that was protestable at all.

Plaintiff asserts that the payment of "withheld duties" with regard to the sixty-two entries in question was made under duress and therefore was a "charge or exaction" protestable under 19 U.S.C. § 1514(a)(3).[4] It is the position of the plaintiff that the payment of $48,153.04 was a charge or exaction because there was no avenue for avoiding the threatened lawsuit for forfeiture value except by depositing the monies demanded by the government. Plaintiff argues that absent an alternative to the mitigation procedure the payment tendered was made under coercion and compulsion. This court cannot agree with plaintiff's position.

As the defendant points out, the monies paid were part of a settlement in mitigation of penalties assessed upon the entries that are the subject of this action and upon numerous other entries not before this court. Plaintiff voluntarily paid the monies in issue as part of a settlement it requested and negotiated. The plaintiff was free at any time during negotiations with the defendant to decline settlement. Had the plaintiff refused settlement, the defendant, as in any case, could have pursued its legal remedies. It can hardly be argued that the pursuit by the defendant of its legal remedies is tantamount to coercion.

Plaintiff has attempted to separate certain entries from the entire settlement because it believed the defendant's position was weak with respect to those entries. However, the sixty-two entries that are the subject of this litigation are part of 805 entries considered in the potential penalty case as well as in the offer by the defendant to settle. There is no indication in the record that the offer to settle, or the final settlement, was severable. The Customs Service accepted plaintiff's payment and in exchange agreed to forego suit for the entire penalty amount. Since plaintiff chose to pay the amount in dispute as an alternative to being sued, this court does not find the defendant compelled payment or that payment was made involuntarily.

In *Carlingswitch, Inc.* v. *United States,* 85 Cust. Ct. 63, C.D. 4873, 500 F. Supp. 223 (1980), *aff'd,* 68 CCPA 49, C.A.D. 1264, 651 F.2d 768 (1981) (Carlingswitch I), the court discussed whether or not a payment to the Customs Service was voluntary or involuntary and

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[4] 19 U.S.C. § 1514(a)(3) (1976) & Supp. IV (1980) provides:

Except as provided in subsection (b) of this section, section 1501 of this title (relating to voluntary reliquidations), section 1516 of this title (relating to petitions by domestic interested parties as defined in section 1677(9) (C), (D), and (E) of this title), section 1520 of this title (relating to refunds and errors), and section 1521 of this title (relating to reliquidations on account of fraud), decisions of the appropriate customs officer, including the legality of all orders and findings entering into the same, as to—

* * * * *

(3) All charges or exactions of whatever character within the jurisdiction of the Secretary of the Treasury;

* * * * * * * * *

shall be final and conclusive upon all persons (including the United States and any officer thereof) unless a protest is filed in accordance with this section, or unless a civil action contesting the denial of a protest, in whole or in part, is commenced in the United States Court of International Trade in accordance with chapter 169 of title 28 within the time prescribed by section 2636 of that title. When a judgment or order of the United States Court of International Trade has become final, the papers transmitted shall be returned, together with a copy of the judgment or order to the appropriate customs officer, who shall take action accordingly.

whether or not a "charge or exaction" existed as set forth in 19 U.S.C. § 1514. The plaintiff in *Carlingswitch I* tendered approximately $92,000.00 to the government in connection with a penalty investigation under section 592 of the Tariff Act of 1930, as amended, 19 U.S.C. § 1592, for understating the value of certain shipments of switches, indicator lights and related products. The Customs Service subsequently issued a penalty notice to the plaintiff, and then approximately 18 months later notified the plaintiff that it was remitting the forfeiture claim in full because the claim was barred by the running of the statute of limitations. Plaintiff then filed a protest requesting a refund of the tender, was denied, and suit was instituted in the Customs Court. Plaintifff's argument in *Carlingswitch I* was that by virtue of 19 U.S.C. §§ 1520(a)(3) [5] and 1514(a)(3),[6] the Customs Service's refusal to refund monies paid in satisfaction of duties amounted to a "charge or exaction" within the meaning of 19 U.S.C. § 1514(a)(3) and jurisdiction existed under 28 U.S.C. § 1582(a)(3).[7] The Customs Court rejected this argument by the plaintiff and found that 28 U.S.C. § 1582(a)(3) did not confer jurisdiction.

The Customs Court in *Carlingswitch I* determined, and the Court of Customs and Patent Appeals (CCPA) affirmed, that neither an importer's voluntary tender of approximately $92,000.00 to the Customs Service in connection with a penalty investigation for understating the value of certain shipments, nor the Customs Service's subsequent refusal to refund the monies tendered, was an "exaction" for purposes of establishing jurisdiction over an importer's action to recover the voluntarily tendered funds. It was stated by Judge Maletz that the tender was made by the plaintiff "on its own initiative and without request or demand by Customs in order to limit its potential penalty liability by complying with the 'voluntary disclosure' practice of Customs." 85 Cust. Ct. at 65, 500 F. Supp. at 226.

In evaluating whether a charge or exaction existed pursuant to 19 U.S.C. § 1514, the court in *Carlingswitch I* looked to the plain meaning of the word "exaction", and noted definitions from The Random House Dictionary, Webster's Dictionary, and Black's Law Dictionary. The court concluded with the aid of these definitions that "[a]t the very least, to constitute an 'exaction' under section 514(a)(3), there would have had to have been some compulsion on

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[5] 19 U.S.C. § 1520(a)(3) (1976) provides in part:
The Secretary of the Treasury is authorized to refund duties or other receipts in the following cases:
* * * * * * *
Fines, penalties, and forfeitures.—Whenever money has been deposited in the Treasury on account of a fine, penalty, or forfeiture which did not accrue, or which is finally determined to have accrued in an amount less than that so deposited, or which is mitigated to an amount less than that so deposited or is remitted.

[6] *See supra* note 4.

[7] 28 U.S.C. § 1582(a)(3) (1976) (amended 1980) provides in part:
(a) The Customs Court shall have exclusive jurisdiction of civil actions instituted by any person whose protest pursuant to the Tariff Act of 1930, as amended, has been denied, in whole or in part, by the appropriate customs officer, where the administrative decision, including the legality of all orders and findings entering into the same, involves: * * * all charges or exactions of whatever character within the jurisdiction of the Secretary of the Treasury; * * *.

the part of Customs requiring plaintiff to have paid the monies." 85 Cust. Ct. at 66, 500 F. Supp. at 227.

In the case at hand, the amount paid by ITT was a settlement amount arrived at and agreed upon by the parties. It was not in and of itself a fine, penalty or forfeiture and was voluntarily paid by the plaintiff in order to avoid suit by the United States. Plaintiff argues that *Carlingswitch I* is easily distinguishable from the case at hand because this case does not involve a protest against a refusal to refund an amount deposited pursuant to 19 U.S.C. § 1520(a)(3) and does not deal with a voluntary tender prior to the issuance of a penalty notice. This court does not find these distinctions determinative. *Carlingswitch I* is helpful in defining what is a "charge or exaction" within the meaning of 19 U.S.C. § 1514(a)(3) and the parameters of voluntariness in this context.

In the instant case, the record is replete with facts that demonstrate voluntary behavior. The mitigation proceedings, during which plaintiff was always represented by counsel, lasted over 1 year with plaintiff submitting many petitions. More importantly, plaintiff, as the result of these petitions, was successful in achieving many significant reductions in the penalties assessed. Plaintiff was only advised that the negotiations were about to come to a close when defendant was about to lose its right to sue due to the running of the statute of limitations.

As Judge Maletz noted in *Carlingswitch, Inc.* v. *United States,* 5 CIT —, Slip Op. 83-13, 560 F. Supp. 46 (Feb. 13, 1983), *appeal docketed,* No. 83-871 (Fed. Cir. March 14, 1983) (Carlingswitch II),[8] "[i]n order for such payments to be truly voluntary, they must be done 'by design or intentionally or purposely or by choice or of one's own accord or by the free exercise of the will.' " 5 CIT at —, Slip Op. 93-13 at 10, 560 F. Supp. at 49 (quoting *Smith* v. *Noble Drilling Co.,* 272 F. Supp. 321, 322 (E.D. La. 1967), *aff'd,* 412 F.2d 952 (5th Cir. 1969)). Since payment in the case at hand was a means of mitigating a claim and optional on the part of the parties, this court can only conclude that the decision to pay the settlement amount was by the exercise of free will and not by compulsion on the part of the defendant.

Having determined that the plaintiff in this case acted voluntarily and without compulsion from the Customs Service, a charge or exaction cannot be said to exist under 19 U.S.C. § 1514(a)(3) for purposes of establishing subject matter jurisdiction in this court. Therefore, although a protest was filed in this case, the protest was inappropriate because the settlement decision was not a protest-

[8] *Carlingswitch II* is identical in subject matter to *Carlingswitch I,* which was dismissed for lack of subject matter jurisdiction. However, the decision in *Carlingswitch I* was prior to the effective date of 28 U.S.C. § 1581(i) (Supp. V 1981) and the enactment of the Customs Court Act of 1980. Plaintiff moved, in *Carlingswitch II,* alleging jurisdiction under 28 U.S.C. § 1581(i). The court rejected this assertion, citing *Montgomery Ward & Co.* v. *Zenith Radio Corp.,* 69 CCPA —, 673 F.2d 1254 (1982), noting the legislative history, and concluding that new causes of action cannot be created under 28 U.S.C. § 1581(i). 5 CIT at —, Slip Op. 83-13 at 7, 560 F. Supp. at 48.

able decision, and jurisdiction cannot be said to exist under 28 U.S.C. § 1581(a).

Finally, plaintiff has asserted, at a late point in the litigation and seemingly as an afterthought, that if this court does not have jurisdiction under 28 U.S.C. § 1581(a), it must have jurisdiction under 28 U.S.C. § 1581(i) (Supp. V 1981).[9] This court is not persuaded that this is the case. The theory that 28 U.S.C. § 1581(i) can be used to create a cause of action where one does not otherwise exist has been repeatedly rejected. *See United States* v. *Uniroyal, Inc.*, 69 CCPA —, 687 F.2d 467, 472 (1982); *Montgomery Ward & Co.*, v. *Zenith Radio Corp.*, 69 CCPA —, 673 F.2d 1254, 1261 (1982). While pursuant to 28 U.S.C. § 1581(i)(4) this court has jurisdiction over the administration and enforcement with respect to matters referred to in paragraphs (1)–(3) and subsections (a)–(h) of 28 U.S.C. § 1581, plaintiff has failed to demonstrate why this court should exercise such jurisdiction in this case.

CONCLUSION

Given this court's determination that it is without subject matter jurisdiction in this matter, defendant's motion to dismiss must be, and hereby is, *GRANTED.*

It is so ordered.

(Slip 83–115)

UNITED STATES STEEL CORPORATION, REPUBLIC STEEL CORPORATION, ET AL., PLAINTIFFS *v.* UNITED STATES, ET AL., DEFENDANTS, AND HIGHVELD LIMITED, COMPANHIA SIDERURGICA PAULISTA (COSIPA), AND USINAS SIDERURGICAS DE MINAS GERAIS (USI MINAS), DEFENDANTS-INTERVENORS

Consolidated Court No. 82-10-01361

Before WATSON, *Judge.*

Memorandum Opinion and Order on Motions for Certification of Appeal, Stay and Severance

[Motion for Certification Granted; Motion for Severance Granted; Motion for Stay Granted as to Severed Action.]

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[9] 28 U.S.C. § 1581(i) provides:

(i) In addition to the jurisdiction conferred upon the Court of International Trade by subsections (a)–(h) of this section and subject to the exception set forth in subsection (j) of this section, the Court of International Trade shall have exclusive jurisdiction of any civil action commenced against the United States, its agencies, or its officers, that arises out of any law of the United States providing for—

(1) revenue from imports or tonnage;

(2) tariffs, duties, fees, or other taxes on the importation of merchandise for reasons other than the raising of revenue;

(3) embargoes or other quantitative restrictions on the importation of merchandise for reasons other than protection of the public health or safety; or

(4) administration and enforcement with respect to the matters referred to in paragraphs (1)–(3) of this subsection and subsections (a)–(h) of this section.

(Decided November 9, 1983)

Law Department of United States Steel Corporation (D. B. King, J. J. Mangan, C. D. Mallick, L. Ranney and *P. J. Koenig* of counsel) for plaintiff United States Steel Corporation.

Cravath, Swaine & Moore (Joseph R. Sahid of counsel) for plaintiffs, Republic Steel Incorporated, National Steel Corporation, and Cyclops Corporation.

J. Paul McGrath, Assistant Attorney General, *David M. Cohen,* Director, Commercial Litigation Branch *(Francis J. Sailer,* attorney, Commercial Litigation Branch) for the federal defendants.

Wald, Harkrader & Ross (Christopher A. Dunn of counsel) for defendants-intervenors COSIPA and USIMINAS.

WATSON, *Judge:* The Court has been presented with a series of related motions centered on the desire of plaintiff United States Steel Corporation (U.S. Steel) to appeal the decision of this Court that its corporate counsel should not have access to confidential business information in the administrative record of this judicial review. *United States Steel Corporation, Republic Steel Corporation, et al.* v. *United States, et al.,* 6 CIT—(Slip Opinion 83-76, July 22, 1983) *rehearing denied,* Slip Opinion 83-99 (October 8, 1983). U.S. Steel has also moved to stay this action pending appeal. In a related motion (made prior to denial of the rehearing), plaintiffs Republic Steel Corporation, Inland Steel Company, Jones & Laughlin Steel Incorporated, National Steel Corporation, and Cyclops Corporation (the Five) moved to sever their action from that of U.S. Steel. They renewed the motion following the denial of rehearing. All the filings made in connection with the motions for certification, stay, and severance have been considered by the Court.

The federal defendants are neutral on the question of certification for appeal, favor the stay of the action if an appeal is certified, and oppose the severance motions made by the Five.

The Five do not oppose certification but oppose U.S. Steel's motion to the extent that it would stay the action being prosecuted by the Five.

U.S. Steel opposes the severance motions of the Five.

The Brazilian intervenors express no opinion on the issue of certification but support a stay in the event an appeal is certified and oppose the severance motions of the Five.

In this opinion, the Court decides in favor of plaintiff United States Steel Corporation's motion for certification of the question of access by corporate counsel to confidential business information in the administrative record. At the same time, it severs from Court No. 82-10-01361 those claims being made by U.S. Steel in which lack of access is an impediment to their conduct of litigation, namely the issues or "creditworthiness," "equity infusions" and "preferential loans." It also stays the severed action.

U.S. Steel remains a party plaintiff in the original Court No. 82-10-01361 with respect to the issues of "time periods" and "methodology," on which the access issue has no bearing. That action is not stayed.

On the question of the presence of those factors which may serve as grounds for appeal, the Court finds them to be present. The issue of whether corporate counsel for U.S. Steel should have access to business confidential information of competitors of U.S. Steel is a controlling question of law in the sense that it markedly restricts the manner in which U.S. Steel may conduct the litigation if it does not retain outside counsel. Although the Court found its own reasoning compelling, it can recognize that there is a substantial ground for difference of opinion on this issue. An immediate appeal from that decision may materially advance the ultimate termination of the litigation being conducted by U.S. Steel.

On the question of what should be done with respect to the action insofar as it is also being prosecuted independently by five other plaintiffs, the Court has not been persuaded by U.S. Steel that the proper step is to hold the entire action in abeyance. What U.S. Steel may lose by seeking appeal is the opportunity to participate as a party in the first wave of judicial review with respect to three issues of importance, but this is not a controlling consideration.

Their challenge on those issues however remains alive in the severed action, so it is not possible to say that they are suffering irreparable injury. The failure to achieve the most desirable order of presentation of issues from the standpoint of litigation strategy is not an irreparable injury to a party. This could easily happen in separate actions involving the same administrative determination if the actions moved at different paces under different judges or even under the same judge. Here, possibly because the parties and the Court have been bending every effort to achieve a unified, efficient, and speedy resolution of the action, this parting of the ways is more jarring than it would ordinarily be. In any event, the reasons for continuing the action as completely as possible are persuasive, notwithstanding the slight complication it involves.

The action has been given a statutory priority in 28 U.S.C. § 2647(4) and must be expedited in every way. Five plaintiffs wish to pursue their action and have already filed briefs on the pending issues. If a balance must be struck, the Court considers the overall completion of the judicial review to be more important as a matter of policy than the interest of a given party in pursuing a matter of particular concern to it. Given the conflicting desires of the parties, the Court believes that it has resolved them as fairly as possible.

Accordingly, it is hereby

ORDERED that Slip Opinion 83–76 be amended to include the paragraph of this opinion which begins "on the question of the presence of those factors which may serve as grounds for appeal," and it is further

ORDERED that the claims by U.S. Steel regarding the issues of "creditworthiness," "equity infusions," and "preferential loans" are

severed and given the designation of Court No. 82-10-01361S, and it is further

ORDERED that Court No. 82-10-01361S be stayed pending application for appeal and if appeal is granted, pending appeal.

Decisions of the United States Court of International Trade

Abstracts

Abstracted Protest Decisions

DEPARTMENT OF THE TREASURY, *November 10, 1983.*

The following abstracts of decisions of the United States Court of International Trade at New York are published for the information and guidance of officers of the Customs and others concerned. Although the decisions are not of sufficient general interest to print in full, the summary here given will be of assistance to Customs officials in easily locating cases and tracing important facts.

WILLIAM VON RAAB,
Commissioner of Customs.

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	ASSESSED	HELD	BASIS	PORT OF ENTRY AND MERCHANDISE
				Item No. and Rate	Item No. and Rate		
P83/339	Rao, J. November 4, 1983	Audiovox Corp.	82-7-00967	Item 685.29 6%	Item 685.29 Free of duty pursuant to GSP	Agreed statement of facts	New York Converters
P83/340	Rao, J. November 4, 1983	Instyle Imports Ltd., c/o Elco Coat, Inc.	82-8-01110	Item 382.04 42.5%	Item 382.81 25¢ per lb. + 27.5%	Agreed statement of facts	New York Ladies' raincoats "style No. 2473"
P83/341	Rao, J. November 4, 1983	Matos, Felix L.	80-10-01675	Item 640.10 5%	Item 640.10 Free of duty pursuant to GSP	Agreed statement of facts	San Juan Metal pressure containers
P83/342	Landis, J. November 4, 1983	Cleveland Street Togs	80-6-00987, etc.	Under item 807.00 at rate of duty applicable to item 382.33, 382.81 or 380.84 with allowance given to cost or value of some of the fabric components, the product of the U.S. and utilized in assembling the imported merchandise; no allowance made for fabric components, the product of U.S. subjected to buttonhole and/or pocket slit operations during assembly of imported garments	Components subjected to buttonhole and/or pocket slit operations during the assembly process are properly classifiable under item 807.00 and entitled to duty allowance	U.S. *v.* Mast Industries, Inc. No. 81-18 aff'd 12/30/81	New York American goods returned; articles of wearing apparel assembled abroad in part of U.S. fabricated components

P83/343	Landis, J. November 4, 1983	North American Foreign Trading Corp.	82-4-00537	Item 676.20 4.7% (calculator portion) Item 716.18 59¢ each	Item 676.20 4.7%	Agreed statement of facts	New York LCD travel alarm with calculator models B6930 and B6931
P83/344	Landis, J. November 4, 1983	Sara International Inc.	81-7-00850	Item 807.00/ 382.8137 Dutiable values less cost or value of U.S. products, excluding components subjected to buttonholing or similar operations Merchandise appraised on basis of constructed value	Item 807.00/ 382.8137 Dutiable values represented by entered values, $19.2262/dozen (style No. 4612), $15.5649/dozen (style No. 4512), $18.0047/dozen (style No. 4613), $15.6070/dozen (style No. 4514), $17.3385/dozen (style No. 4511) less cost or value of U.S. products, including components subjected to buttonholing or similar operation.	Agreed statement of facts	Miami Ladies' blouses
P83/345	Watson, J. November 4, 1983	Canadian General-Tower, Limited.	81-12-01761, etc.	Item 355.65 8% Item 355.85 7.4%	Item 771.43 5.8%, 5.6%, 5.3% or 5.1%	Agreed statement of facts	Buffalo Vinyl wall coverings

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	ASSESSED	HELD	BASIS	PORT OF ENTRY AND MERCHANDISE
				Item No. and Rate	Item No. and Rate		
P83/346	Rao, J. November 7, 1983	Leisurecraft Products, Ltd.	82-3-00321	Item 715.05 Various rates (modules) Items 720.24 or 720.28 Various rates (cases) Item 740.35 Various rates (bands)	Item 688.36 5.5%, 5.3%, 5.1% or 4.9% (merchandise marked "A") Item 656.25 25%, 23.1%, 21.3% or 19.4% (merchandise marked "B" plated with gold) Item 657.35 6¢ per lb. + 7.5%, 7.4%, 7% or 6.7% (merchandise marked "B" brass) Item 657.20 9.5%, 9%, 8.6% or 8.1% (merchandise marked "B" steel) Item 656.20 16%, 14.9%, 13.9% or 12.8% (merchandise marked "B" coated or plated with palladium)	Agreed statement of facts	New York Electronic LCD watches consisting of modules; modules and cases, etc. (merchandise marked "A"); cases and bands (merchandise marked "B"); entireties

P83/347	Rao, J. November, 1983	Leisurecraft Products, Ltd.	82-3-00409	Item 715.05 Various rates (modules) Item 720.24 or 720.28 Various rates (cases) Item 740.35 Various rates (bands)	Item 688.36 5.5%, 5.3%, 5.1% or 4.9% (merchandise marked "A") Item 656.25 25%, 23.1%, 21.3% or 19.4% (merchandise marked "B") plated with gold) Item 657.35 6¢ per lb. + 7.5%, 7.4%, 7% or 6.7% (merchandise marked "B" brass) Item 657.20 9.5%, 9%, 8.6% or 8.1% (merchandise marked "B" steel) Item 656.20 16%, 14.9%, 13.9% or 12.8% (merchandise marked "B" coated or plated with palladium)	Agreed statement of facts	New York Electronic LCD watches consisting of modules; modules and cases, etc. (merchandise marked "A"); cases and bands merchandise marked "B"); entireties
P83/348	Newman, J. November 7, 1983	Federal Pacific Electric Co.	79-9-01470	Item 682.05 12.5%	Item 682.07 6%	Federal Pacific Electric Company v. U.S. Abstract P83/226, 7/25/83	Buffalo Sensing transformers
P83/349	Newman, J. November 7, 1983	Federal Pacific Electric Co.	82-3-00350	Item 682.50 11%	Item 682.07 5.1%	Federal Pacific Electric Company v. U.S. Abstract P83/226, 7/25/83	Detroit Sensing transformers
P83/350	Newman, J. November 7, 1983	Glasgow, Estelle V., d/b/a Vicki Glasgow.	73-2-00415	Item 725.50 9.5%	Item 766.25 Free of duty	Agreed statement of facts	New York Music boxes

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	ASSESSED	HELD	BASIS	PORT OF ENTRY AND MERCHANDISE
				Item No. and Rate	Item No. and Rate		
P83/351	Boe, J. November 7, 1983	Jet Sonic Corporation.	81-4-00444	Item 716.10 or 716.18 Various rates (modules) Item 720.24 or 720.28 Various rates (cases) Item 740.30 or 740.34 or 740.35, Various rates (band) Item 740.30 or 740.38 Various rates (chains) Item 774.55 or 791.54 Various rates (straps)	Item 688.36 5.3%	U.S. v. Texas Instruments, Inc. No. 81-23, 3/25/82	New York Solid state electronic digital watches entireties
P83/352	Boe, J. November 7, 1983	Jet Sonic Corporation.	81-4-00446	Item 716.10 or 716.18 Various rates (modules) Item 720.24 or 720.28 Various rates (cases) Item 740.30 or 740.34 or 740.35 Various rates (bands) Item 740.30 or 740.38 Various rates (chains) Item 774.55 or 791.54 Various rates (straps)	Item 688.36 5.3%	U.S. v. Texas Instruments, Inc. No. 81-23, 3/25/82	New York Solid state electronic digital watches entireties

P83/353	Boe, J. November 7, 1983	May Dept. Stores Int'l., Inc.	81-10-01461	Item 720.16 69¢ each + 14.8%	Item 685.24 9.9%	Texas Instruments, Inc. v. U.S. 1 CIT 236 (1981) aff'd U.S. v. Texas Instruments, Inc. No. 81-23 3/25/82	Los Angeles Clock porton of LED clock radios
P83/354	Boe, J. November 7, 1983	RCA Corporation.	81-5-00608, etc.	Item 685.20 5% (module) Item 685.19 4.8% (module) Item 685.40 5.5% (module) Item 720.18 $1.125 each + 16% (digital clock/timer) Item 715.23 $1.12 each + 17.5% (digital clock/timer)	Item 685.20 5% Item 685.19 4.8%	Texas Instruments, Inc. v. U.S. 1 CIT 236 (1981) aff'd U.S. No. 81-23 3/25/82	Los Angeles Portable VCR tuner/timer module
P83/355	Watson, J. November 8, 1983	Canadian General-Tower, Limited	82-5-00679, etc.	Item 355.65 or 355.85 8.5%, 8% or 7.4%	Item 771.43 5.8%, 5.6%, 5.3% or 5.1%	Agreed statement of facts	Detroit: Port Huron Vinyl wall coverings
P83/356	Watson, J. November 8, 1983	Canadian General-Tower, Limited.	83-7-01021	Item 355.65 or 355.85 8.5%, 8% or 7.4%	Item 771.43 5.8%, 5.6%, 5.3% or 5.1%	Agreed statement of facts	Buffalo Vinyl wall coverings

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	ASSESSED	HELD	BASIS	PORT OF ENTRY AND MERCHANDISE
				Item No. and Rate	Item No. and Rate		
P83/357	Boe, J. November 8, 1983	Jet Sonic Watch Corp.	81-4-00442	Item 716.10 or 716.18 Various rates (modules) Item 720.24 or 720.28 Various rates (cases) Item 740.30 or 740.34 or 740.35 Various rates (bands) Item 740.30 or 740.38 Various rates (chains) Item 774.55 or 791.54 Various rates (straps)	Item 688.36 5.3%	U.S. v. Texas Instruments, Inc. No. 81-23, 3/25/82	New York Solid state electronic digital watches; entireties
P83/358	Boe, J. November 9, 1983	Jet Sonic Watch Corp.	81-4-00429	Item 716.10 or 716.18 Various rates (modules) Item 720.24 or 720.28 Various rates (cases) Item 740.30 or 740.34 or 740.35 Various rates (bands) Item 740.30 or 740.38 Various rates (chains) Item 774.55 or 791.54 Various rates (straps)	Item 688.36 5.3%	U.S. v. Texas Instruments, Inc. No. 81-23, 3/25/82	New York Solid state electronic digital watches; entireties

Decisions of the United States Court of International Trade

Abstracts

Abstracted Reappraisement Decisions

DESISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	BASIS OF VALUATION	HELD VALUE	BASIS	PORT OF ENTRY AND MERCHANDISE
R83/697	Watson, J. November 3, 1983	A & A Trading Corp.	R59/17038, etc.	Export value	Appraised values shown on entry papers less amounts attributable to buying commission	Agreed statement of facts	New York Various electrical articles
R83/698	Watson, J. November 3, 1983	Brother International Corp.	R64/18441, etc.	Export value	F.o.b. unit invoice prices plus 20% of difference between f.o.b. unit prices and appraised values	Agreed statement of facts	New Orleans Sewing machine heads
R83/699	Watson, J. November 3, 1983	Hayim & Co. et al.	252173A, etc.	Export value	F.o.b. unit invoice prices plus 20% of difference between f.o.b. unit invoice prices and appraised values	Agreed statement of facts	New York Cotton and wool hooked rugs and pipe fittings

DESISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	BASIS OF VALUATION	HELD VALUE	BASIS	PORT OF ENTRY AND MERCHANDISE
R83/700	Watson, J. November 3, 1983	Hayim & Co., Inc.	R61/3398, etc.	Export value	F.o.b. unit invoice prices plus 20% of difference between f.o.b. unit invoice prices and appraised values	Agreed statement of facts	New York Rugs and mats
R83/701	Watson, J. November 3, 1983	Iwai New York Inc.	R60/5735, etc.	Export value	F.o.b. unit invoice prices plus 20% of difference between f.o.b. unit prices and appraised values	Agreed statement of facts	New York Woolen sweaters
R83/702	Watson, J. November 3, 1983	Iwai New York Inc.	R62/8177, etc.	Export value	F.o.b. unit prices plus 20% of difference between f.o.b. unit prices and appraised values (schedule A) Appraised unit values less 7.5% thereof, net packed (schedule B)	Agreed statement of facts	New York Transistor radios with accessories and parts; entireties (Schedules A and B)
R83/703	Re, C.J. November 4, 1983	Sanyo Electric Inc.	73-10-02925, etc.	Export value	Appraised values shown on entry papers less additions included to reflect currency revaluation	C.B.S. Imports Corp. v. U.S. (C.D. 4739)	New York Wearing apparel, etc.

R83/704	Re, C.J. November 7, 1983	C. Itoh & Co. (America) Inc.	74-1-00248, etc.	Export value (merchandise marked "A") United States value (merchandise marked "D" and "E")	Appraised values shown on entry papers less additions included to reflect currency revaluation (merchandise marked "A") Landed duty paid price less statutory deductions for general expenses and profit in amount of 11.72% thereof less freight, insurance and duty, provided said deductions do not result in appraised value below f.o.b. invoiced values less additions included to reflect currency revaluation (merchandise marked "D") Landed duty paid price less statutory deductions for general expenses and profit in amount of 11.72% thereof less freight, insurance and duty, provided that deductions do not result in appraised value below f.o.b. invoice values (merchandise marked "E")	C.B.S. Imports Corp. v. U.S. (C.D. 4739)	New York Not stated
R83/705	Re, C.J. November 7, 1983	YKK Zipper (USA), Inc.	80-10-01712	Export value	Appraised values shown on entry papers less, additions included to reflect currency revaluation	C.B.S. Imports Corp. v. U.S. (C.D. 4739)	New York Not stated

DESISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	BASIS OF VALUATION	HELD VALUE	BASIS	PORT OF ENTRY AND MERCHANDISE
R83/706	Re, C.J. November 8, 1983	C. Itoh & Co. (America) Inc.	73-2-00346, etc.	Export value (merchandise marked "A") United States value (merchandise marked "D")	Appraised values shown on entry papers less additions included to reflect currency revaluation (merchandise marked "A") Landed duty paid price less statutory deductions for general expenses and profit in amount of 11.72% thereof less freight, insurance and duty, provided deductions do not result in an appraised value below f.o.b. invoiced values less additions included to reflect currency revaluation (merchandise marked "D")	C.B.S. Imports corp. v. U.S. (C.D. 4739) (merchandise marked "A") Agreed statement of facts (merchandise marked "D")	New York Not stated (merchandise marked "A"); synthetic textiles (merchandise marked "D")
R83/707	Watson, J. November 8, 1983	Gunze New York Inc.	R59/13693, etc.	Export value	F.o.b. unit invoice prices plus 20% of difference between f.o.b. unit prices and appraised values	Agreed statement of facts	New York Silk piece goods, etc.
R83/708	Watson, J. November 8, 1983	Mersco Textile Co., Inc.	R58/11052, etc.	Export value	F.o.b. unit invoice prices plus 20% of difference between f.o.b. unit invoice prices and appraised values	Agreed statement of facts	New York Hooked and tube rugs
R83/709	Watson, J. November 9, 1983	Shalom & Co.	R63/14754, etc.	Export value	F.o.b. unit prices plus 20% of difference between f.o.b. unit prices and appraised values	Agreed statement of facts	New York Transistor radios, accessories and parts; entirety

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U.S. Customs Service

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SERIALS PROCESSING DEPT
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